

(ii) The answer is required, in the Board's view, since the language of the Regulation is explicitly inclusive, covering "any loan \* \* \* secured directly or indirectly by any stock for the purpose of purchasing or carrying any stock registered on a national securities exchange." Moreover, the withdrawal in 1945 of the original section 2(e) of the Regulation, which exempted "any loan for the purpose of purchasing a stock from or through a person who is not a member of a national securities exchange \* \* \*" plainly implies that transactions of the sort described are now subject to the general prohibition of section 1.

(3) *Determination of "current market value."* (i) The third question is how to determine the "current market value" of a block of registered stock which represents a controlling interest in a corporation where the block is purchased at a price in excess of the average of bid and asked prices on the Exchange for the day of the purchase, and also in excess of the average price on the Exchange over recent months, while the parties to the loan, on the other hand, believe the purchase to be a bargain and report opportunities to resell at a price which is higher still. In a case of this kind, the Board believes that the current market value of the block is the price at which the actual purchase was made.

(ii) The Supplement to Regulation U states that current market value shall be determined by "any reasonable method". Regulation T, which, while not controlling, may throw some light on the problem, provides that the current market value of a security "throughout the day of its purchase or sale" shall be "total cost or the net proceeds of its sale." The Board is of the opinion that actual sale price in an arm's length transaction provides the best evidence of value. Particularly in circumstances such as those indicated above, it must be assumed that this price reflects intangible factors including control.

[24 FR 1858, Mar. 14, 1959]

**§ 221.111 Purchase-and-sale substitution on same day.**

(a) Amendments to part 221, effective June 15, 1959 (24 FR 3867), deal, among

other things, with changes in collateral for a "restricted loan", i.e., a bank loan that exceeds the maximum loan value of the collateral therefor. In connection with those amendments an inquiry has been received as to whether the bank may permit a substitution of collateral for such a loan under the amended part in a case in which the excess of the loan over the maximum loan value is not thereby increased and the substitution occurs in the form of a purchase and sale of collateral, both the purchase and sale orders being executed on the same day.

(b) The bank may permit such a purchase-and-sale substitution under the amended part without additional collateral or reduction in the loan if it reasonably ascertains, and has evidence thereof in its records, that the purchase and sale orders were executed on the same day. The controlling events which must occur on the same day are the executions of the purchase order and sale order, and not the bank's receipt or release of stock certificates. It may be noted that the result is substantially similar to that under the June 15, 1959, amendments to Part 220 of this subchapter. Substitutions that do not involve a same-day purchase and sale are subject to the withdrawal limitations under both parts.

[24 FR 4698, June 10, 1959]

**§ 221.112 Loans by bank in capacity as trustee.**

(a) The Board's advice has been requested whether a bank's activities in connection with the administration of an employees' savings plan are subject to this Part 221.

(b) Under the plan, any regular, full-time employee may participate by authorizing the sponsoring company to deduct a percentage of his salary and wages and transmit the same to the bank as trustee. Voluntary contributions by the company are allocated among the participants. A participant may direct that funds held for him be invested by the trustee in insurance, annuity contracts, Series E Bonds, or in one or more of three specified securities which are listed on a stock exchange. Loans to purchase the stocks may be made to participants from

funds of the trust, subject to approval of the administrative committee, which is composed of five participants, and of the trustee. The bank's right to approve is said to be restricted to the mechanics of making the loan, the purpose being to avoid cumbersome procedures.

(c) Loans are secured by the credit balance of the borrowing participants in the savings fund, including stock, but excluding (in practice) insurance and annuity contracts and government securities. Additional stocks may be, but, in practice, have not been pledged as collateral for loans. Loans are not made, under the plan, from bank funds, and participants do not borrow from the bank upon assignment of the participants' accounts in the trust.

(d) It is urged that loans under the plan are not subject to this Part 221 because a loan should not be considered as having been made by a bank where the bank acts solely in its capacity of trustee, without exercise of any discretion.

(e) The Board reviewed this question upon at least one other occasion in recent years, and full consideration has again been given to the matter. After considering the arguments on both sides, the Board has reaffirmed its earlier view that, in conformity with an interpretation not published in CFR which was published at page 874 of the 1946 Federal Reserve Bulletin, this Part 221 applies to the activities of a bank when it is acting in its capacity as trustee. Although the bank in that case had at best a limited discretion with respect to loans made by it in its capacity as trustee, the Board concluded that this fact did not affect the application of the regulation to such loans.

[25 FR 5923, June 28, 1960]

**§ 221.113 Loan which is secured indirectly by stock.**

(a) A question has been presented to the Board as to whether a loan by a bank to a mutual investment fund is "secured \* \* \* indirectly by any stock" within the meaning of § 221.1, so that the loan should be treated as subject to the regulation.

(b) Briefly, the facts are as follows. Fund X, an open-end investment com-

pany, entered into a loan agreement with Bank Y, which was (and still is) custodian of the securities which comprise the portfolio of Fund X. The agreement includes the following terms, which are material to the question before the Board:

(1) Fund X agrees to have an "asset coverage" (as defined in the agreements) of 400 percent of all its borrowings, including the proposed borrowing, at the time when it takes down any part of the loan.

(2) Fund X agrees to maintain an "asset coverage" of at least 300 percent of its borrowings at all times.

(3) Fund X agrees not to amend its custody agreement with Bank Y, or to substitute another custodian without Bank Y's consent.

(4) Fund X agrees not to mortgage, pledge, or otherwise encumber any of its assets elsewhere than with Bank Y.

(c) In § 221.109 the Board stated that because of "the general nature and operations of such a company", any "loan by a bank to an open-end investment company that customarily purchases stocks registered on a national securities exchange \* \* \* should be presumed to be subject to this part as a loan for the purpose of purchasing or carrying registered stocks" ("purpose loans"). The Board's interpretation went on to say that—

This would not be altered by the fact that the open-end company had used, or proposed to use, its own funds or proceeds of the loan to redeem some of its own shares \* \* \*.

(d) Accordingly, the loan by Bank Y to Fund X was and is a "purpose loan". However, a loan by a bank is not subject to this part unless (1) it is a purpose loan and (2) it is "secured directly or indirectly by any stock". In the present case, the loan is not "secured directly" by stock in the ordinary sense, since the portfolio of Fund X is not pledged to secure the credit from Bank Y. But the word "indirectly" must signify some form of security arrangement other than the "direct" security which arises from the ordinary "transaction that gives recourse against a particular chattel or land or against a third party on an obligation"